D.T.E. 99-42/43

Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement.

---

APPEARANCES: Barbara Anne Sousa, Esq.

Bruce P. Beausejour, Esq.

185 Franklin Street, Room 1403

Boston, MA 02107

FOR: VERIZON NEW ENGLAND, INC. D/B/A

VERIZON MASSACHUSETTS

Petitioner

Ellen W. Schmidt, Esq.

Stacey L. Parker, Esq.

AT&T Broadband

6 Campanelli Drive

Andover, MA 01810

FOR: AT&T BROADBAND

Petitioner

TABLE OF CONTENTS

ORDER ON IMPASSE ISSUES

# I. INTRODUCTION AND PROCEDURAL HISTORY

On August 25, 1999, the Department of Telecommunications and Energy ("Department") issued an Order on the consolidated arbitration involving MediaOne Telecommunications of Massachusetts, Inc., now AT&T Broadband ("AT&T Broadband"), Greater Media Telephone, Inc. ("Greater Media"), and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"), now Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"). D.T.E. 99-42/43, 99-52 (1999). That Order was issued in accordance with the Petitions of Arbitration submitted by AT&T Broadband, Greater Media, and Verizon pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act").[(1)]

On September 14, 1999, Verizon filed a Motion for Reconsideration and Clarification and a Motion to Stay the Department's decision. On March 24, 2000, the Department issued its Order addressing the motions for reconsideration and clarification. D.T.E. 99-42/43, 99-52 (2000). In that Order, the Department directed AT&T Broadband, Greater Media, and Verizon to file completed interconnection agreements within three weeks of the date of the Order. Id. at 47, 54. The parties have requested and received several extensions of this deadline.[(2)] The Department set the final deadline for filing AT&T Broadband and Verizon's completed interconnection agreement for May 25, 2000. Despite efforts by the parties, AT&T Broadband and Verizon were unable to agree to language on several issues. On May 25, 2000, AT&T Broadband and Verizon each filed proposed interconnection agreements with the Department including terms agreed to by the parties, as well as unresolved contract provisions.[(3)] On June 15, 2000, AT&T Broadband and Verizon filed initial comments with the Department, summarizing the unresolved issues relating to their interconnection agreement. Also on June 15, 2000, AT&T Broadband filed a Motion to Re-Open the Record ("Motion to Re-Open") to permit AT&T Broadband to introduce portions of testimony by a Verizon witness in D.T.E. 99-271, the Department's investigation into Verizon's application to enter into the long distance market in Massachusetts. On June 19, 2000, both AT&T Broadband and Verizon filed reply comments. Verizon's opposition to AT&T Broadband's Motion to

Re-Open was contained within Verizon's reply comments.

On June 21, 2000, the Department held a technical conference to discuss the impasse issues identified by the parties. On August 3, 2000, the parties filed a joint status report on the remaining impasse issues. After further narrowing the unresolved issues, on August 14, 2000, both AT&T Broadband and Verizon submitted final proposals for interconnection terms relating to the remaining impasse issues ("August Proposals"). On November 28, 2000, the Department, with the agreement of the parties, established a procedural schedule to receive supplemental briefs and affidavits on one of the impasse issues -- appropriate rates for dedicated transport accessed from a mid-span meet, pertaining to Sections 4.4.1(b), 4.4.2, and 11.5 of the parties' interconnection agreement.[(4)]

## II. AT&T BROADBAND'S MOTION TO RE-OPEN THE RECORD

### A. Positions of the Parties

#### 1. AT&T Broadband

AT&T Broadband requests that the Department re-open the record to permit AT&T Broadband to introduce portions of the testimony of Kenneth Garbarino, a Verizon witness in D.T.E. 99-271 (Motion to Re-Open at 1). AT&T Broadband states that Mr. Garbarino's testimony was heard after the conclusion of evidence in this proceeding and that portions of Mr. Garbarino's testimony directly relate to one of the impasse issues under review in this arbitration (id.). Specifically, AT&T Broadband states that Mr. Garbarino's testimony in D.T.E. 99-271 directly contravenes Verizon's position concerning Section 26.1.5 of its proposed interconnection agreement relating to whether local number portability ("LNP") provisioning and due dates are linked to the on-time performance metric (id. at 2).

#### 2. Verizon

Verizon argues that there is no reason to re-open the record to include Mr. Garbarino's testimony because the basis for AT&T Broadband's motion is incorrect (Verizon Reply Comments at 12). Verizon states that a careful reading of the transcript of Mr. Garbarino's testimony in D.T.E. 99-271 indicates that his statements do not contravene Verizon's position in this proceeding (id. at 11-12).

### B. Standard of Review

The Department's procedural rule on re-opening hearings states, in pertinent part, that "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." 220 C.M.R. § 1.11(8). Good cause for purposes of re-opening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would likely have a significant impact on the decision. Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Boston Gas Company, D.P.U. 88067 (Phase II) at 7 (1989); Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986).

### C. Analysis and Findings

Verizon is correct. Mr. Garbarino's November 4, 1999 testimony in D.T.E. 99-271 does not contravene Verizon's position on the relationship between LNP due dates and the on-time performance metric. At worst, Mr. Garbarino's statement on due dates referred to by AT&T Broadband was ambiguous as to whether he was referring to "requested" or "confirmed" due dates. However, AT&T Broadband should have resolved the ambiguity at the time the testimony was heard. Mr. Garbarino's testimony is not information regarding a material issue that would have a significant impact on the Department's decision in this proceeding. Therefore, the Department denies AT&T Broadband's Motion to Re-Open for failure to demonstrate good cause.

## III. STANDARD OF REVIEW FOR INTERCONNECTION AGREEMENTS

Section 252(c) of the Act sets out the standards for arbitrations by state commissions. Section 252(c) states, in relevant part, that a state commission shall:

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to [section 252(d)].

Section 251(c)(2) of the Act defines the obligations for ILECs to interconnect with other carriers. Under 47 U.S.C. § 251(c)(2), each ILEC has the duty:

to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network -

(A) For the transmission and routing of telephone exchange service and exchange access;

(B) At any technically feasible point within the carrier's network;

(C) That is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) On rates, terms, and conditions that are just, reasonable, and non-discriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.

Furthermore, § 252(e)(3) provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards and requirements."

## IV. IMPASSE ISSUES

### A. Introduction

There are five impasse issues identified by the parties to be addressed by the Department. The issues are: (1) placeholder language relating to dedicated transport from a mid-span meet [Sections 4.4.1(b), 4.4.2, 11.5]; (2) local number portability ("LNP") provisioning [Section 26.1.5]; (3) mid-span fiber meet facilities charges [Section 4.4.1(a)];

(4) audit rights and compensation for Internet traffic [Section 5.7.3]; and (5) directory services arrangements [Section 19].

### B. Placeholder Rates for Dedicated Transport from Mid-Span Meet [Sections 4.4.1(b), 4.4.2, 11.5]

#### 1. Introduction

While the Department is conducting further review of this issue, the Department must determine whether placeholder language mandating a) switched access rates, or b) unbundled InterOffice Facilities ("IOF") transport rates will govern Verizon's dedicated transport of AT&T Broadband's traffic from a mid-span fiber meet[5] to Verizon's applicable interconnection points.[6] AT&T Broadband and Verizon were unable to agree to placeholder language on this issue.

#### 2. Positions of the Parties

##### a. AT&T Broadband

AT&T Broadband argues that while the Department is conducting further review of this issue, AT&T Broadband should pay IOF rates for new or existing trunks (AT&T Broadband August Proposal at 4). AT&T Broadband states that if the Department determines that the charges proposed by Verizon are appropriate, AT&T Broadband will be unable to compete effectively in the local exchange market using its current architecture (id. at 3). It is for this reason, AT&T Broadband argues, that the Department should approve the placeholder language AT&T Broadband proposes (id. at 3-4). AT&T

Broadband argues that because of the huge difference in the rates proposed by it and Verizon, the Department must set the interim rates at the lower IOF rate in order to enable AT&T Broadband to continue to compete pending the Department's investigation (id. at 4 n.2). AT&T Broadband further proposes that should the Department ultimately decide that access rates should apply to the dedicated facilities, AT&T Broadband should have a six month transition period prior to the imposition of the new charges in order for it to reevaluate and re-engineer its network (id. at 4).

b. Verizon

Verizon argues that switched access transport rates should apply when Verizon transports AT&T Broadband's terminating traffic to Verizon's applicable IP (Verizon August Proposal at 6). Verizon argues that its proposed rates are consistent with the Act, applicable FCC rules and decisions, and Department-approved tariffs (id.). Accordingly, Verizon proposes placeholder language that incorporates access rates into the interconnection agreement, subject to true-up pending the Department's final decision (id. at 6). Verizon further argues that AT&T Broadband's proposal for unbundled IOF transport rates under a mid-span fiber meet arrangement is inconsistent with the FCC's Local Competition Order and does not meet the definition of unbundled IOF transport under D.T.E. Tariff No. 17 (id. at 6-8). Verizon also argues that AT&T Broadband's proposed placeholder language is unfair because AT&T Broadband proposes to charge transport using Verizon's switched access rates, but would not permit Verizon to apply the same rates for the same transport (id. at 9). Should the Department determine that unbundled IOF transport rates should apply, argues Verizon, then those rates should be equally applicable to both AT&T Broadband and Verizon (id.).

3. Analysis & Findings

On November 28, 2000, the Department established a procedural schedule in order to receive supplemental briefs and affidavits on this issue. However, as the parties have requested, in order to allow the parties to finalize their agreement regarding all other rates, terms, and conditions, the Department will establish placeholder language to control until the Department's final decision on this issue. Because the Department anticipates issuing its final decision on the transport issue relatively quickly, the interval in which the placeholder language will govern this aspect of the parties' interconnection agreement should be relatively short.

The Department agrees with AT&T Broadband that the difference in the rates proposed by AT&T Broadband and Verizon is considerable.[(7)] The Department also notes, without making a finding as to its accuracy, AT&T Broadband's statement that it would be unable to continue to compete effectively pending the Department's further investigation into this issue if the Department set even the *interim* rate at the higher switched access rate proposed by Verizon (AT&T Broadband's August Proposal at 4 n.2). Given the fact that neither party alleged harm resulting from using the IOF rate in the interim, and, by virtue of the true-up provision, Verizon does not face the possibility of a loss from an interim IOF rate, the Department will set the interim rates for Verizon's dedicated transport of terminating traffic from a mid-span meet at the lower UNE IOF transport rate, subject to true-up pending the Department's investigation on the merits.

C. Local Number Portability [Section 26.1.5]

1. Introduction

There are two issues for the Department to address concerning LNP as it relates to the parties' interconnection agreement. First, the Department must determine whether Verizon's performance in provisioning LNP should be measured by Verizon's ability to meet AT&T Broadband's requested due date for the port.[(8)] Second, the Department must decide whether penalties should be imposed on Verizon should it fail to provision by AT&T Broadband's requested due date.

2. Positions of the Parties

a. AT&T Broadband

AT&T Broadband contends that Verizon's performance to provision LNP should be measured by whether Verizon meets the due dates requested by AT&T Broadband, provided that those due dates are consistent with provisioning intervals agreed upon by Verizon (AT&T Broadband August Proposal at 2). Without such a measurement, AT&T Broadband argues, it has no assurance that its port requests will be implemented in a timely manner (id.). AT&T Broadband proposes that if Verizon fails to provision LNP in accordance with AT&T Broadband's requested due date in five percent of ports over a 15-day period of time, then Verizon will be required to "audit" its performance, investigate and determine the cause for such delays, and correct the deficiencies (id.). After correcting the problems that resulted in Verizon's inability to meet AT&T Broadband's requested due dates, AT&T Broadband proposes that Verizon be required to track its performance for at least one quarter (id.). If, based on Verizon's records, its performance for the quarter falls below the 95 percent porting performance standard for on-time ports established by the Department in D.T.E. 99-42/43, 99-52 (1999), AT&T Broadband proposes that the "on-time port credits" established by the Department shall apply (id.).

b. Verizon

Verizon argues that new performance standards regarding Verizon's ability to provide a FOC date that matches AT&T Broadband's requested due date should not be required, and that penalties should not be imposed on Verizon for failure to match the two dates

(Verizon August Proposal at 2). Verizon contends that a standard that measures discrepancies between Verizon's FOC date and AT&T Broadband's requested due date cannot be characterized as an "on-time" performance standard because such a standard would not measure Verizon's ability to provision service by its committed due date, which is the accepted method of measuring on-time performance (id.). Verizon explained that its ability to provision LNP by a company's requested due date is not a recognized provisioning interval, and, thus, is not historically measured or captured by Verizon (id.). Further, Verizon argues that AT&T Broadband has presented no evidence that would justify adopting a new performance standard (id. at 3, 5).

Instead, Verizon proposes that if AT&T Broadband notifies Verizon of a discrepancy between the FOC date and AT&T Broadband's requested due date, Verizon will determine if difficulties with its provisioning system exist, and, if so, will take corrective action (id. at 3). Verizon states that if such discrepancies account for five percent or more of the accurate and timely porting requests submitted by AT&T Broadband in any given month, Verizon will conduct and complete a review and root cause analysis within 30 days of AT&T Broadband's notification to Verizon of the discrepancy (id.). Verizon will also provide AT&T Broadband with information concerning Verizon's efforts to improve its performance for three consecutive months (id.).

Verizon argues that its proposed 30-day period, as opposed to AT&T Broadband's proposed 15-day time-frame for monitoring performance, is consistent with historical performance measurements and reporting results required by the Department for on-time performance review, and, thus, is an appropriate benchmark to use here (id. at 4). Establishing a 15-day benchmark, Verizon argues, would be unnecessary, time-consuming, and would require costly systems modifications (id.). Moreover, Verizon contends that AT&T Broadband's proposal for an "audit" process is unnecessary given Verizon's willingness to conduct a review and root cause analysis, and Verizon's commitment to conduct monitoring activities after undertaking corrective action (id.).

Finally, Verizon states that AT&T Broadband's proposed penalty for failure to meet the requested provisioning due date is inconsistent with the Department-established practices for measuring Verizon's on-time performance (id. at 5). Verizon argues that if the Department decides to consider a new performance standard or penalty, the penalty should be addressed in a plenary proceeding, and not on the basis of a single arbitration (id.).

3. Analysis and Findings

In D.T.E. 99-42/43, 99-52, at 97-114 (1999), the Department addressed the LNP provisioning process, performance standards, and penalties, as they concern the parties' interconnection agreement. In that Order, the Department found that AT&T Broadband made a compelling showing that LNP performance standards were warranted, given the adverse impact on AT&T Broadband and its customers for failed ports. Id. at 101. Thus, the Department approved a 95 per cent "Percent On Time -- LNP" performance standard, but declined to impose other measurements on interim steps in the porting process suggested by AT&T Broadband.[(9)] Id. at 106-107, 110. In the instant case, the Department does not discount AT&T Broadband's concerns regarding the possibility of discrepancies between its LNP requested due dates and Verizon's FOC dates;[(10)] however, the Department finds that Verizon has offered a reasonable response to the concerns raised by AT&T Broadband. The Department is persuaded that AT&T Broadband's proposal would require costly systems reprogramming and modifications and thus be overly burdensome to Verizon. Unless and until AT&T Broadband provides sufficient evidence of a recurrent problem that is not adequately addressed by the measures adopted today and which persuasively demonstrates the Department should depart from its established practices for measuring Verizon's on-time performance, Verizon's proposal in Section 26.1.5 to investigate discrepancies brought to its attention, take corrective action, and conduct monitoring activities is sufficient to address the possible occurrence of Verizon's FOC date not matching AT&T Broadband's requested due date.

In addition, AT&T Broadband has not made a sufficient showing that performance credits or penalties should be imposed on Verizon for failure to meet AT&T Broadband's requested due dates. AT&T Broadband's penalty proposal is more appropriate in the context of a new metric; since we do not adopt a new metric, we do not adopt the penalty. The Department expects that the specific measures and modifications required of Verizon detailed in Verizon's proposed Section 26.1.5 will provide AT&T Broadband with additional assurance of timely porting without the necessity of imposing additional financial penalties.

D. Mid-Span Meet Facilities Charges [Section 4.4.1(a)]

1. Introduction

This issue relates to the apportionment of costs to use a mid-span fiber meet arrangement. The Department must determine whether AT&T Broadband and Verizon should have mutual use of their allotted facilities at no charge for the term of the interconnection agreement or for the life of the mid-span meet arrangement.

2. Positions of the Parties

a. AT&T Broadband

AT&T Broadband argues that no charges should apply for the use of the mid-span facilities during the term of the parties' interconnection agreement only and not beyond (AT&T Broadband August Proposal at 4). AT&T Broadband states that issues related to how the interconnection trunks will be used in the future is an issue for the future and is not part of the instant interconnection agreement (AT&T Broadband Comments at 11). AT&T Broadband states that the parties cannot know how they may wish to use or charge for these facilities after the instant interconnection agreement has expired and that there is no need to make such a determination at this time (id.).

b. Verizon

Unlike AT&T Broadband, Verizon argues that financial agreements for the joint mid-span fiber arrangement continue for the life of the mid-span fiber meet arrangement, rather than merely for the term of the interconnection agreement (Verizon August Proposal at 10). Verizon states that AT&T Broadband's proposal ignores the very nature of a mid-span meet arrangement; that is, a jointly owned and funded arrangement for facilitating interconnection between ILEC and CLEC (Verizon Reply Comments at 3). By definition, Verizon argues, it should not be subject to additional charges for any existing mid-span meet arrangements in subsequent interconnection agreements, because Verizon has already shared equally in the construction costs (id.). Verizon argues that if AT&T Broadband's proposal is adopted, AT&T Broadband would be permitted to charge Verizon for its own joint investment (id. at 4). Verizon argues that the same "no charge" policy should apply whether the mid-span meet is newly constructed or already in existence (id. at 3). Verizon requests that if the Department were to adopt AT&T Broadband's proposal, there should be a reasonable transition period to determine whether it is more economical for Verizon to self-provision its interconnection facilities or to purchase entrance facilities and/or transport from AT&T Broadband (Verizon August Proposal at 10).

3. Analysis and Findings

In Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-324, at ¶ 553 (rel. August 8, 1996) ("Local Competition Order"), the FCC stated that in a meet point arrangement, each party pays its portion of the costs to build out the facilities to the meet point. The FCC further stated, "[i]n this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement." Id. The Local Competition Order was silent, however, on whether costs should be portioned for the term of the applicable interconnection agreement or the entirety of the meet point arrangement. In D.T.E. 99-42/43, 99-52, at 125-129 (1999), the Department addressed the obligations of the parties upon the expiration of their interconnection agreement. The Department stated that the parties shall continue to operate under the terms of the expired agreement until the parties negotiate new terms, or until the Department arbitrates the unresolved issue(s) following petition by the parties. Id. at 28; see 47 U.S.C. § 252(b). The Department finds that these provisions provide adequate protection to the parties from the possibility of unreasonable application of charges for use of mid-span meet point facilities in future interconnection agreements. Therefore, there is no need to require the parties' financial arrangements as contained in the instant interconnection agreement to continue for the entirety of the mid-span fiber meet arrangement. For the same reason, ruling on Verizon's request for a reasonable transition period is likewise unnecessary at this time.[(11)] Consequently, Section 4.4.1(a) of the parties' interconnection agreement shall reflect that no other charges shall apply to either parties' use of its allotted mid-span fiber meet arrangement for the term of the agreement.

E. Compensation for Internet Traffic [Section 5.7.3]

1. Introduction

The Department must determine whether the traffic of both AT&T Broadband and Verizon in excess of a 2:1 terminating-to-originating ratio should be presumed to be traffic bound for Internet service providers ("ISPs"), and therefore not subject to reciprocal compensation. Moreover, the Department must decide whether one party may audit the other party's traffic to determine if its traffic is local, and therefore subject to reciprocal compensation.

2. Positions of the Parties

a. AT&T Broadband

AT&T Broadband proposes that whenever one party's traffic is at least twice the amount of traffic sent by the other party, it should be presumed to be ISP-bound traffic and not subject to reciprocal compensation unless the other party can rebut that presumption or the Department determines otherwise (AT&T Broadband August Proposal at 5). AT&T Broadband further argues that any traffic under the 2:1 ratio should be presumed to be local traffic and thus subject to reciprocal compensation unless the other party can rebut the presumption or the Department decides otherwise (id.). AT&T Broadband also argues that it should be given the right to audit Verizon's traffic within the 2:1 ratio to determine whether the traffic is subject to reciprocal compensation (id.).

b. Verizon

Verizon argues that the Department has determined that the 2:1 ratio applies only to Verizon when it terminates traffic to a CLEC and is not applicable to a CLEC terminating traffic to Verizon (Verizon August Proposal at 12-13). Verizon states that in MCI WorldCom, Inc., D.T.E. 97-116-C (1999), the Department noted that a CLEC could rebut the 2:1 proxy, thereby allowing a CLEC to demonstrate that its terminating traffic is not ISP-bound (id.

at 13). Verizon contends that AT&T Broadband presented no argument or evidence in this proceeding which provides a basis for the Department to extend its ruling in D.T.E. 97-116-C as AT&T Broadband proposes (id.).

Also, Verizon argues that AT&T Broadband's proposal to presume that all traffic terminated to Verizon above the 2:1 ratio is not subject to reciprocal compensation must be rejected because Verizon and the CLECs are not similarly situated (id.). Specifically, Verizon contends that, unlike AT&T Broadband and other CLECs, Verizon's customer base cannot be limited to ISPs (id.). Verizon notes that CLECs have the ability to change the direction of the traffic on their networks or change the character of their customers to manipulate reciprocal compensation payments (id.). Verizon states that it cannot limit its customer base solely to those who receive calls from CLECs (id.). Accordingly, Verizon argues, there should be no presumption that when a CLEC terminates traffic to Verizon above the 2:1 ratio, that these calls are Internet related (id. at 14).

In addition, Verizon argues that there should be no mutual application of audit rights between Verizon and AT&T Broadband for traffic within the 2:1 ratio (id.). Verizon argues that in D.T.E. 99-42/43, 99-52, at 66 (1999), the Department specifically upheld Verizon's right to rebut the 2:1 presumption by conducting an audit of CLEC traffic within the 2:1 ratio (id.). There is no comparable ruling, argues Verizon, that provides AT&T Broadband a basis to extend the 2:1 ratio to traffic that AT&T Broadband terminates to Verizon or to extend Verizon's audit rights for traffic within the 2:1 ratio to AT&T Broadband (id.).

3. Analysis and Findings

In February 1999, the FCC released Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Declaratory Ruling, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Notice of Proposed Rulemaking, FCC 99-38 (rel. February 26, 1999) ("Internet Traffic Order"), holding that ISP-bound traffic is not subject to reciprocal compensation, and establishing a rulemaking to develop a method for determining compensation for the termination and transport of ISP-bound traffic. On May 19, 1999, the Department issued MCI WorldCom, Inc., D.T.E. 97-116-C (1999), in which the Department established a 2:1 ratio of terminating-to-originating traffic, the excess of which Verizon could presume, subject to CLEC rebuttal, was terminating to an ISP, and thus exclude from reciprocal compensation payments to submitting CLECs. Id. at 28 and n.31.[12] The Department stated, "[t]his 2:1 proxy is rather like a rebuttable presumption, allowing any carrier to demonstrate . . . evidence in negotiations, or ultimately arbitration, that its terminating traffic is not ISP-bound, even if it is in excess of the 2:1 proxy." Id. at 28 n.31. The Department further stated:

[I]n the currently unresolved [state] of inter-carrier compensation for ISP-bound traffic in Massachusetts (i.e., apart from the 2:1 payments for the nonce), we expect carriers to begin the voluntary negotiation process provided in section 252 of the 1996 Act, in order to establish, insofar as may be warranted, an inter-carrier compensation mechanism that would apply to compensation for . . . all later-occurring ISP-bound traffic.

Id. at 30. While the ordering clause and language cited by Verizon in D.T.E. 97-116-C did, as Verizon contends, pertain specifically to Verizon's obligation to pay reciprocal compensation to CLECs, the Order is not as narrow as Verizon asserts. For example, as stated above, the Department directed carriers to enter into negotiations regarding compensation relating to *all* ISP-bound traffic. See id. Moreover, D.T.E. 97-116-C did not prohibit any carrier from negotiating a 2:1 ratio, or any other type of arrangement, relating to compensation for such traffic. In the absence of a negotiated cost-based agreement by the parties, it is reasonable for the Department to require mutual application of the 2:1 proxy contemplated in D.T.E. 97-116-C. Verizon's argument that it is not similarly situated to CLECs and should therefore be exempt from mutual application of the 2:1 terminating-to-originating ratio is without merit. In MCI WorldCom, Inc., D.T.E. 97-116, at 13 (1998), the Department expressed concerns[(13)] that ISPs and CLECs could potentially "game" the system, as it then existed, by establishing themselves as CLECs solely (or predominantly) to participate in reciprocal compensation at the expense of true, efficient competitive entry. See also Internet Traffic Order at ¶ 6; D.T.E. 97-116-A (1999); D.T.E. 97-116-C at 31-37, 39 (1999). It was for this reason that the Department established the 2:1 ratio. Verizon now turns that argument on its head by asserting that if the 2:1 ratio is applied to traffic terminated to Verizon by CLECs, AT&T Broadband and other CLECs will again have the opportunity to game the system to their advantage, this time by limiting their customer bases to or targeting those who solely or predominantly make non-Internet outbound calls terminating on Verizon's network. In this instance, the Department finds that the equity in having truly "reciprocal" reciprocal compensation provisions outweighs Verizon's allegation of possible gaming.[(14)] Therefore, the Department will require mutual application of the 2:1 terminating-to-originating ratio as proposed by AT&T Broadband.

Likewise, the audit rights granted to Verizon, as contemplated in D.T.E. 99-42/43, 99-52, at 66 (1999), should also be shared by AT&T Broadband. The Department established the 2:1 proxy precisely because there is no current technological means to segregate local traffic from ISP-bound traffic. See D.T.E. 97-116-C at 28 n.31. In D.T.E. 99-42/43, 99-52, at 64-66 (1999), the Department granted Verizon the right to audit CLEC traffic, providing Verizon the opportunity to determine whether certain traffic *within* the 2:1 ratio was likewise ISP-bound and therefore not subject to reciprocal compensation. Audit rights enjoyed by both AT&T Broadband and Verizon will allow the parties to fine-tune the 2:1 ratio to reflect more accurately the true nature of the traffic being exchanged between them.

### F. Directory Services Arrangements [Section 19]

#### 1. Introduction

The Department must determine whether the language that the parties negotiated concerning directory listings and distributions, directory assistance and operator services, busy line verification and busy line verification interrupt, should be superseded by the language contained in Verizon's tariff, D.T.E. No. 17, concerning the identical issues.

#### 2. Positions of the Parties

##### a. AT&T Broadband

AT&T Broadband argues that the language originally negotiated and agreed upon by the parties concerning directory services should be incorporated into the final agreement and not the language contained in Verizon's tariff, D.T.E. No. 17 (AT&T Broadband August Proposal at 5).

b. Verizon

Verizon argues that the interconnection agreement it entered into with AT&T Broadband should incorporate by reference relevant tariff provisions from D.T.E. Tariff No. 17 relating to directory services (Verizon August Proposal at 14).[15] Verizon argues that applying provisions of Tariff No. 17 to the AT&T Broadband agreement would ensure that the same requirements apply under the agreement as exist pursuant to the tariff, and would be a more efficient and reasonable means of addressing general terms and conditions relating to billing services, application of credits, operator services, and directory listing services (id.). Further, because AT&T Broadband failed to articulate which provisions it disputes as unreasonable or contrary to the Act, Verizon argues that AT&T Broadband's objections to Verizon's proposal should be rejected.

3. Analysis and Findings

The Department has stated that the Act encourages carriers to fashion agreements through negotiation and arbitration so that each contract addresses the individual business strategies and priorities of the parties to the contract. See Bell Atlantic Tariffs Nos. 14 and 17, D.T.E. 98-57, at 18 (2000). In that Order, the Department found that CLECs should be able to rely with certainty on their interconnection agreements and not be concerned that Verizon would file a tariff that, if approved, would negate their contract. Id. The Department held that tariff provisions will be applicable to interconnection agreements only where the parties to the agreement have explicitly provided in the agreement that an applicable tariff shall control the terms of the offering. Id. at 19. The Department acknowledged, however, that there may be extraordinary circumstances in which a tariff provision will supersede a corresponding provision in an interconnection agreement. Id. Without enumerating the possible extraordinary circumstances that would provide a basis for override by tariff provision, the Department emphasized that the burden on any carrier that proposes to trump an interconnection provision with a tariff provision will be very significant. Id. In this case, Verizon has not met this burden. Verizon has not explained how the instant disagreement reaches the magnitude of extraordinary circumstances required by D.T.E. 98-57. Thus, the Department finds that the provisions of the interconnection agreement negotiated and agreed upon by the parties concerning directory services arrangements, as contained in Section 19 of AT&T's proposed agreement, shall control.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That AT&T Broadband's Motion to Re-Open the Record is hereby DENIED; and it is

FURTHER ORDERED: That the issues under consideration in this arbitration be determined as set forth in this Order; and it is

FURTHER ORDERED: That AT&T Broadband and Verizon incorporate these determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department, pursuant to Section 252(e)(1), within 21 days from the date of this Order.

By Order of the Department,

____________________________________

James Connelly, Chairman

____________________________________

W. Robert Keating, Commissioner

____________________________________

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

1. Section 252(b)(1) of the Act permits a carrier to petition a state commission to arbitrate any issues left unresolved after voluntary negotiations between the carriers.

2. On April 3, 2000, the Department received notice from Charter Communications, as successor to Greater Media, stating that Greater Media would not seek to consummate an interconnection agreement with Verizon. On April 6, 2000, the Arbitrator closed the docket in D.T.E. 99-52.

3. The parties identified those issues upon which agreement could not be reached as "impasse issues." The parties filed a "Summary of Impasse Issues" on May 25, 2000.

4. See Section IV.B., below, for a discussion of placeholder language for this issue.

5. A mid-span fiber meet is a type of interconnection architecture whereby two carriers' transmission facilities meet at a mutually agreed upon point of interconnection with the point of interconnection in the middle of a ring of fiber optic cabling. Each party builds half a fiber ring and purchases and maintains all the fiber and electronics for its half of the ring. D.T.E. 99-42/43, 99-52, at 13 n.12 (1999).

6. An interconnection point ("IP") is a specific point designated by each carrier on its respective network from which the terminating carrier provides the transport (and termination) to complete a local call. Id. at 22.

7. AT&T Broadband offered the example of the difference in costs to a new entrant in Massachusetts with approximately 30,000 customers (AT&T Broadband Comments

at 7). Using the information in Exhibit A to Verizon's proposed interconnection agreement, AT&T Broadband stated that the cost for transport alone would amount to approximately $20.00 per customer per month under access rates, compared to only $2.66 per customer per month under the unbundled network elements ("UNE") IOF rates (id.).

8. AT&T Broadband's requested due date is the date requested by AT&T Broadband for the port. AT&T Broadband's requested due date cannot be shorter than the standard service interval of three business days, but can be equal to or longer than the interval. Verizon's firm order confirmation ("FOC") date is the date established by Verizon for the port.

9. According to the "Percent On-Time -- LNP" metric, an LNP order is considered to be provisioned "on-time" if a ten-digit trigger is in place before the porting due date and the removal of the telephone number translations (i.e., the retail disconnect) is completed on or after 11:59 p.m. of the porting date. D.T.E. 99-42/43, 99-52, at 103 (1999).

10. AT&T Broadband argued that it faced the possibility of such discrepancies, but offered no testimony that it has experienced actual problems.

11. The Department notes that the parties can negotiate such provisions in future interconnection agreements if they so choose.

12. On March 24, 2000, the United States District Court for the District of Columbia Circuit vacated and remanded the FCC's Internet Traffic Order. In MCI WorldCom, Inc., D.T.E. 97-116-E (2000), the Department denied a motion to vacate D.T.E. 97-116-C, in favor of maintaining the status quo with regard to reciprocal compensation for ISP-bound traffic until the FCC acts on remand. AT&T Broadband and Verizon have agreed that mutual compensation for ISP-bound traffic will be in accordance with any future order issued by the FCC.

13. Concerns raised by Verizon in its pleadings.

14. If gaming or abuse does arise, the Department retains jurisdiction to address, and, if need be, correct, such conduct. For now we trust in the good faith of the parties to bring about peace on this chronically troubled front, at least between themselves.

15. The Department has approved Verizon's tariff, D.T.E. No. 17, as it relates to, inter alia, billing services and application of credits, operator services, and directory listing services. See Bell Atlantic Tariffs Nos. 14 and 17, D.TE. 98-57-Phase I (2000).